

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<p>----- X</p> <p><b>IN RE: SKI TRAIN FIRE IN KAPRUN : AUSTRIA ON NOVEMBER 11, 2000 : -----</b></p> <p><b>This document relates to: : -----</b></p> <p><b>Geier, et al. v. Omnidglow Corporation, et : al., 03 Civ. 8961 : -----</b></p> <p><b>Stadman, et al. v. Austrian National : Tourist Office, Inc., 07 Civ. 3881 : -----</b></p> <p><b>Mitsumoto, et al. v. Robert Bosch Corp., 07 : Civ. 0935 : -----</b></p> <p><b>Batori, et al. v. American Perm., et al., 03 : Civ. 8960 : -----</b></p> <p><b>Mitsumoto, et al. v. Republic Osterreich, 06 : Civ. 2811 : ----- X</b></p>
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**OPINION AND ORDER**

**01 MDL 1428**

**SHIRA A. SCHEINDLIN, U.S.D.J.:**

On June 19, 2007, this Court issued an Opinion and Order (the “June 19 Order”) dismissing the instant cases on the basis of *forum non conveniens*.<sup>1</sup> On July 31, 2007, plaintiffs moved for reconsideration of the June 19 Order under Federal Rule of Civil Procedure 60(b)(2) and Local Civil Rule 6.3. On September 13, 2007, plaintiffs filed their notice of appeal to the Second Circuit of the June 19

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<sup>1</sup> See *In re Ski Train Fire in Kaprun Austria on November 11, 2000*, 499 F. Supp. 2d 437 (S.D.N.Y. 2007).

Order. Accordingly, on October 24, 2007, I issued an Order (the “October 24 Order”) deeming the motion for reconsideration moot and withdrawn in view of the appeal.<sup>2</sup> On June 30, 2008, plaintiffs moved for reconsideration of the June 19 Order and of the October 24 Order.<sup>3</sup> On August 1, 2008, I issued an Order denying the motion for reconsideration as untimely and moot.<sup>4</sup> On December 21, 2009, the Second Circuit affirmed this Court’s June 19 Order.<sup>5</sup> On June 3, 2010, plaintiffs petitioned for a writ of certiorari. On February 22, 2011, the Supreme Court denied certiorari.<sup>6</sup>

On July 8, 2011, plaintiffs filed yet another motion for reconsideration under Rule 60(b)(2) and a request for leave to amend the complaint under Rule 15(a). The motion for reconsideration is denied as untimely. Under Rule 60(b)(2), a motion must be made “no more than a year after the entry of judgment or order

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<sup>2</sup> See Docket No. 64 of 07 Civ. 0935. Although the Order was issued on October 24, 2007, it was subsequently referred to in this litigation as having been issued on October 18, 2007.

<sup>3</sup> See Docket No. 183 of 03 Civ. 8960; Docket No. 77 of 03 Civ. 8961; Docket No. 27 of 07 Civ. 3881; Docket No. 76 of 07 Civ. 0935; Docket No. 70 of 06 Civ. 2811.

<sup>4</sup> See Docket No. 377 of 01 MDL 1428; Docket No. 197 of 03 Civ. 8960; Docket No. 90 of 03 Civ. 8961; Docket No. 42 of 07 Civ. 3881; Docket No. 89 of 07 Civ. 0935; Docket No. 85 of 06 Civ. 2811.

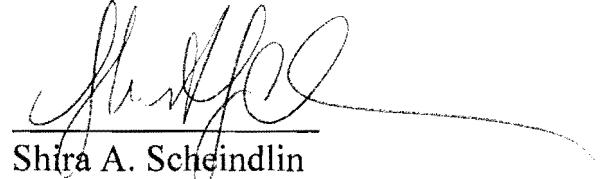
<sup>5</sup> See *Geier v. Omniplex Corp.*, 357 Fed. Appx. 377 (2d Cir. 2009)

<sup>6</sup> See *Geier v. Omniplex Corp.*, 131 S.Ct. 1491 (2011).

or the date of the proceeding.” As plaintiffs seek relief from my June 19, 2007 Opinion and Order, their time to move expired on June 19, 2008.<sup>7</sup> This motion comes more than three years too late. As the cases remain closed, the motion to amend the complaint is denied as moot.

The Court would be happy to return to plaintiffs’ counsel the reams of paper that she has submitted. The Clerk of the Court is directed to close this motion [Docket No. 120 of 07 Civ 0935],<sup>8</sup> and the cases are to remain closed.

SO ORDERED:



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Shira A. Scheindlin  
U.S.D.J.

Dated: July 14, 2011  
New York, New York

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<sup>7</sup> See *Nevitt v. United States*, 886 F.2d 1187, 1188 (9th Cir. 1989) (holding that the Rule 60(b) “one-year limitation period is not tolled during an appeal”).

<sup>8</sup> As of this writing, the motion only appears as indicated; however, if the motion is subsequently filed on the dockets of the other captioned cases, it is to be closed on those dockets as well.

**- Appearances -**

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